IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3539 of 2006

Narendra G. Dawada — Petitioner
Vs.
Bank of India & ors. — Respondents

Mr.Samir Vaidya for petitioner.
Mr.O.A.Das for resp.no.1.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

November 16, 2006.

P.C.

1. Heard the learned counsel for the petitioner.

This petition filed under Article 226 of the Constitution arises from an interlocutory order passed by the Debt Recovery Tribunal constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, on 17th March 2006. The learned counsel for the respondent - Bank on the other hand has taken a preliminary objection to entertain this petition on the ground that the order impugned, though an interlocutory in nature, can be challenged by filing an appeal under Section 20 of the said Act and in support of these contentions he has relied upon the following judgments:

. (i) M.S. Shoes East Ltd Vs. Allahabad Bank **[1998 Company Cases Vol.94 - 475]**,

(ii) Sandeep Singh Sandhu v. Debt Recovery Tribunal **[2000 Debt Recovery Cases 265]** and (iii) Bank of India v. Baroda Cables Pvt. Ltd. & ors. **[1999 Company Cases Vol.95 - 356]**.

. On the other hand, the learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries Ltd. & ors. **[AIR 1999 SC 1975]**, in support of his contentions that inspite of the alternative remedy of appeal being available, a writ petition can be entertained.

2. We have noted that in the case of Industrial Credit and Investement Corporation of India Ltd. (Supra) their Lordships considered the scope of entertaining a petition under Article 227 of the Constitution against the interim orders of Courts and Tribunals and in the said decision it has not been laid down that a writ petition is required to be entertained inspite of a statutory remedy of appeal being available.

3. In the case of Bank of India (Supra) a

Division Bench of the Gujarat High Court considered the scheme of Sections 17 and 20 of the Act and observed as under:

> "Looking to the above provisions, there is no doubt in our minds that there is no provision in the Act stating that an appeal would lie before an Appellate Tribunal only when the order is final in nature. On the contrary, looking to the above provisions in their entirety, it is clear that any order passed by the Debt Recovery Tribunal is subject to challenge under section 20 before the Appellate Tribunal. If it is so, in our opinion, the contention of Mr.Trivedi is well-founded that the aggrieved party should approach the Appellate Tribunal for redressal of grievances."

4. Even otherwise it is a well settled position in law that when a statutory remedy of appeal or revision is available under a special or general statute, a writ petition cannot be entertained against such orders. Section 17(2) of the Act reads as under:

> "17(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

The words used are "any order" and that includes even the interlocutory order. We, therefore, agree with the view taken by the Division Bench of the Gujarat High Court and hold that this petition cannot be entertained on account of the alternative remedy of appeal under Section 20 of the Act being available.

5. The petition is, therefore, rejected as not maintainable. Oral application for stay is hereby rejected.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)